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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1883

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Ammiano, Buchanan, Chesbro,
Garcia, Gordon, and Ting)

February 19, 2014

An act to amend Sections 5898.12, 5898.24, 5898.28, 5898.30, and 5899.2 of, and to add Sections 5898.16 and 5898.33 to, the Streets and Highways Code, relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as amended, Skinner. Public improvements: contractual assessments.

Existing law, the Improvement Act of 1911 (Improvement Act), authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified.

Under existing law, for the purpose of financing the installation of distributed generation renewable energy sources pursuant to the Improvement Act, “permanently fixed” includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the power purchase agreement or lease contains certain provisions, including, but not limited to, provisions intended to ensure that the property owner is guaranteed the electric power from the system for the length of the lien. One of the required provisions is that after installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

The Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) authorizes the establishment of community facilities districts and the issuance of bonds and the levying of special taxes to finance various types of facilities and services within the district.

This bill would revise the information included in the *power* purchase ~~power~~ agreement or lease to allow a system owner to include a specified covenant and warranty in its contract with the property owner, providing that the system will not be removed for the term of the contract. The bill would specifically authorize either full or partial payment for the power purchase agreement or lease to be made after installation of the system.

This bill would make various changes to the Improvement Act to achieve cost reductions and to achieve consistency with similar provisions of the Mello-Roos Act, including changes in recordation requirements and authorizing the financing of facilities in connection with the initial construction of a residential building that is being undertaken by the intended owner or occupant.

This bill would authorize a public agency to transfer, as defined, its right, title, and interest in any voluntary contractual assessments if bonds have not been issued in that regard, subject to an agreement identifying the specific period of time during which the transfer will be operative, not to exceed 3 years. The bill would state that this authorization shall not be construed to authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual assessment, and that a foreclosure action remains the responsibility of the public agency which would retain the sole right to enforce its senior lien status.

This bill would revise various procedures pursuant to which a public agency is authorized to issue bonds under the Improvement Act, including authorizing the public agency to issue new bonds to refinance outstanding bonds payable from contractual assessments levied pursuant to the act, which may be subject to a variable interest rate, under certain circumstances. The bill would authorize a public agency owning property to levy a contractual assessment under the act against a leasehold or possessory interest in that property, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Energy efficiency, renewable energy, and water efficiency
4 upgrades to residential, commercial, industrial, and other properties
5 are integral to furthering the state's goals of reducing greenhouse
6 gas emissions, insulating the state from the impacts of dwindling
7 water resources, and helping Californians save money.
8 (b) Not-for-profit entities and other third parties are increasingly
9 important partners with local governments in funding Property
10 Assessed Clean Energy (PACE) upgrades.
11 (c) The closing costs associated with bond issuance can make
12 PACE financing for small projects cost-prohibitive.
13 (d) By pooling small to medium size PACE projects into one
14 bond, the closing costs for each project can be drastically reduced.
15 (e) In order for a third party to pool projects, it is necessary to
16 enable local governments to assign the revenue from a PACE
17 assessment to an investor prior to the issuance of a bond.
18 (f) The right to foreclose on delinquent voluntary assessments,
19 and the senior lien status of those assessments, should remain with
20 the local government.
21 SEC. 2. Section 5898.12 of the Streets and Highways Code is
22 amended to read:
23 5898.12. (a) It is the intent of the Legislature that this chapter
24 should be used to finance public improvements to lots or parcels
25 that are developed and where the costs and time delays involved
26 in creating an assessment district pursuant to other provisions of

1 this division or any other law would be prohibitively large relative
2 to the cost of the public improvements to be financed.

3 (b) It is also the intent of the Legislature that this chapter should
4 be used to finance the installation of distributed generation
5 renewable energy sources or energy efficiency improvements that
6 are permanently fixed to residential, commercial, industrial,
7 agricultural, or other real property.

8 (c) It is also the intent of the Legislature to address chronic
9 water needs throughout California by permitting voluntary
10 individual efforts to improve water efficiency. The Legislature
11 further intends that this chapter should be used to finance the
12 installation of water efficiency improvements that are permanently
13 fixed to residential, commercial, industrial, agricultural, or other
14 real property, including, but not limited to, recycled water
15 connections, synthetic turf, cisterns for stormwater recovery, and
16 permeable pavement.

17 (d) It is also the intent of the Legislature that a public agency
18 in the process of establishing an assessment program, to the extent
19 feasible, use a good faith effort to provide advance notice of the
20 proposed program to water and electric service providers in the
21 relevant service area, as set forth in Section 5898.24, to allow the
22 most efficient coordination and collaboration between the public
23 agency and water and electric service providers.

24 (e) This chapter shall not be used to finance facilities for parcels
25 in connection with the initial construction of a residential building,
26 unless the initial construction is undertaken by the intended owner
27 or occupant.

28 (f) This chapter shall not be used to finance the purchase or
29 installation of appliances that are not permanently fixed to
30 residential, commercial, industrial, agricultural, or other real
31 property.

32 (g) Assessments may be levied pursuant to this chapter only
33 with the free and willing consent of the owner of each lot or parcel
34 on which an assessment is levied at the time the assessment is
35 levied.

36 SEC. 3. Section 5898.16 is added to the Streets and Highways
37 Code, to read:

38 5898.16. All references to financing in this chapter shall be
39 deemed to also refer to refinancing, except that with respect to
40 refinancing, the legislative body shall conclude that providing the

1 refinancing will result in an increased adoption of the
2 improvements authorized to be financed by this chapter. This
3 section does not constitute a change in, but is declaratory and a
4 clarification of existing law.

5 SEC. 4. Section 5898.24 of the Streets and Highways Code is
6 amended to read:

7 5898.24. (a) A legislative body shall publish notice of a hearing
8 pursuant to Section 6066 of the Government Code, and the first
9 publication shall occur not later than 20 days before the date of
10 the hearing.

11 (b) A legislative body shall provide written notice of a proposed
12 contractual assessment program to all water or electric providers
13 within the boundaries of the area within which voluntary
14 contractual assessments may be entered into not less than 60 days
15 prior to adoption of any resolution pursuant to Section 5898.26.

16 (c) (1) A legislative body administering a voluntary contractual
17 assessment program shall designate an office, department, or
18 bureau of the local agency that shall be responsible for annually
19 preparing the current roll of assessment obligations by assessor's
20 parcel number on property subject to a voluntary contractual
21 assessment.

22 (2) The designated office, department, or bureau shall establish
23 procedures to promptly respond to inquiries concerning current
24 and future estimated liability for a voluntary contractual
25 assessment. Neither the designated office, department, or bureau,
26 nor the legislative body, shall be liable if any estimate of future
27 voluntary contractual assessment liability is inaccurate, nor for
28 any failure of any seller to request notice pursuant to this chapter
29 or to provide the notice to a buyer.

30 (d) For purposes of enabling sellers of real property subject to
31 a voluntary contractual assessment to satisfy the notice
32 requirements of Section 1102.6b of the Civil Code, the legislative
33 body shall cause to be recorded in the office of the county recorder
34 for the county in which the real property is located, concurrently
35 with the instrument creating the voluntary contractual assessment,
36 a separate document that meets all of the following requirements:

37 (1) The title of the document shall be "Payment of Contractual
38 Assessment Required" in at least 14-point boldface type.

39 (2) The document shall include all of the following information:

1 (A) The names of all current owners of the real property subject
2 to the contractual assessment and the assessor's parcel number for
3 the affected real property, or the legal description if there is no
4 assessor's parcel number.

5 (B) The annual amount of the contractual assessment.

6 (C) The date or circumstances under which the contractual
7 assessment expires, or a statement that the assessment is perpetual.

8 (D) The purpose for which the funds from the contractual
9 assessment will be used.

10 (E) The entity to which funds from the contractual assessment
11 will be paid and specific contact information for that entity.

12 (F) The signature of the authorized representative of the
13 legislative body to which funds from the contractual assessment
14 will be paid.

15 (e) The recorder shall only be responsible for examining the
16 document required by subdivision (d) and determining that it
17 contains the information required by subparagraphs (A), (E), and
18 (F) of paragraph (2) of subdivision (d). The recorder shall index
19 the document under the names of the persons and entities identified
20 in subparagraphs (A) and (E) of paragraph (2) of subdivision (d).
21 The recorder shall not examine any other information contained
22 in the document required by subdivision (d).

23 (f) In order to reduce the costs associated with contractual
24 assessments, a legislative body may authorize the document
25 described in subdivision (d) to be combined with the notice
26 required by Section 5898.32, and recorded as a single document.

27 SEC. 5. Section 5898.28 of the Streets and Highways Code is
28 amended to read:

29 5898.28. (a) A public agency may issue bonds pursuant to this
30 chapter, the principal and interest for which would be repaid by
31 voluntary contractual assessments. A public agency may advance
32 its own funds to finance work to be repaid through voluntary
33 contractual assessments, and may from time to time sell bonds to
34 reimburse itself for those advances. A public agency may enter
35 into a relationship with an underwriter or financial institution that
36 would allow the sequential issuance of a series of bonds, each bond
37 being issued as the need arose to finance work to be repaid through
38 voluntary contractual assessments. The interest rate of each bond
39 may be determined by an appropriate index, but shall be fixed at
40 the time each bond is issued-*if unless* the bond is issued to finance

1 improvements to *nonresidential private property* or residential
 2 *private* property with ~~three or fewer~~ *four or more* units. Bond
 3 proceeds may be used to establish a reserve fund for debt service
 4 or paying the costs of foreclosure on properties participating in
 5 the program, to fund capitalized interest for a period up to two
 6 years from the date of issuance of the bonds, to fund the
 7 administrative fee required for participation in the PACE Reserve
 8 Program established pursuant to Chapter 4 (commencing with
 9 Section 26050) of Division 16 of the Public Resources Code, and
 10 to pay for expenses incidental to the issuance and sale of the bonds.
 11 Division 10 (commencing with Section 8500) shall apply to any
 12 bonds issued pursuant to this section, insofar as that division is
 13 not in conflict with this chapter.

14 (b) (1) Notwithstanding any provision of this division or the
 15 Improvement Act of 1915 (Division 10 (commencing with Section
 16 8500)), a public agency may transfer its right, title, and interest in
 17 and to any voluntary contractual assessments, if bonds have not
 18 been issued pursuant to subdivision (a). The public agency and
 19 the transferee shall enter into an agreement that, among other
 20 things, identifies the specific period of time during which the
 21 transfer of voluntary contractual assessments will be operative,
 22 not to exceed three years. Except as provided in paragraph (2), a
 23 transfer of any voluntary contractual assessments under this
 24 subdivision shall be treated as a true and absolute transfer of the
 25 asset so transferred for the period of the transfer and not as a pledge
 26 or grant of a security interest by the public agency for any
 27 borrowing. The characterization of the transfer of any of those
 28 assets as an absolute transfer by the public agency shall not be
 29 negated or adversely affected by the fact that only a portion of any
 30 voluntary contractual assessment is transferred, nor by any
 31 characterization of the transferee for purposes of accounting,
 32 taxation, or securities regulation, nor by any other factor
 33 whatsoever. As used in this section, “transfer” means sale,
 34 assignment, or other transfer.

35 (2) Nothing in this subdivision shall be construed to authorize
 36 the transferee to initiate and prosecute a foreclosure action resulting
 37 from a delinquency in the payment of the voluntary contractual
 38 assessment. Initiation and prosecution of a foreclosure action shall
 39 remain the responsibility of the public agency, which shall retain
 40 the sole right to enforce its senior lien status.

(c) Division 10 (commencing with Section 8500) shall apply to any bonds issued pursuant to this section, insofar as that division is not in conflict with this chapter. Notwithstanding Part 16 (commencing with Section 8880) of Division 10, if any reserve fund is established in whole or in part with legally available moneys of one or more public agencies other than bond proceeds, the public agency or agencies may provide that a property owner who prepays all or a portion of the assessment shall not be credited with the public agency moneys in the reserve fund and there shall be no reduction in the assessment pursuant to Sections 8884 or 8881, and the public agency moneys in the reserve account shall not be used to redeem bonds pursuant to Section 8885 and any public agency moneys remaining in the reserve fund at the maturity of the bonds shall be disbursed to the public agency free and clear of the lien of the issuing instrument. Any excess bond proceeds may be used to pay principal of and interest on the bonds in addition to any other use permitted by Division 10 (commencing with Section 8500).

(d) Notwithstanding any other law, the public agency may conclude that it is in the public interest for bonds issued by the public agency pursuant to this chapter to not be subject to redemption prior to their scheduled maturity date except as a result of the prepayment in whole or in part of contractual assessments. Notwithstanding any other limitations set forth in law, and with respect to bonds issued to finance improvements to nonresidential property or residential property with four or more units, the redemption premium associated with a redemption of bonds as a result of a contractual assessment prepayment shall be determined by agreement of the public agency issuing the bonds, the property owner and the initial purchaser of the bonds.

(e) (1) Without the prior written approval of the property owner, and notwithstanding any other law, a public agency may issue bonds pursuant to this chapter to refinance outstanding bonds payable from contractual assessments levied pursuant to this chapter if all of the following are true:

(A) The total interest cost to maturity on the refunding bonds is less than the total interest cost to maturity on the bonds to be refunded.

(B) The final maturity date of the refunding bonds is not later than the final maturity date of the refunded bonds, except that if

the bonds to be refunded are variable rate bonds, the final maturity date of the refunding bonds may extend to, but not beyond, the useful life of the financed improvements.

(C) The total interest component of the scheduled contractual assessment installments to maturity, after issuance of the refunding bonds, is less than the total interest component of the scheduled contractual assessment installments to maturity prior to issuance of the refunding bonds.

(2) For purposes of this section, in connection with the issuance of fixed rate bonds to refinance variable rate bonds, the interest rate on the refunded bonds for purpose of demonstrating compliance with this section may be assumed to be the maximum possible interest rate on the bonds to be refunded as long as the legislative body concludes that the public interest will be served by issuing fixed rate bonds to refinance the outstanding variable rate bonds. In connection with an issuance of refunding bonds under this chapter, the legislative body may direct that an amendment to the document required by subdivision (d) of Section 5898.24 be recorded to reflect the revised contractual assessment installment schedule.

(f) With the prior written approval of the ~~property owner, owner of nonresidential property or residential property with four or more units,~~ and notwithstanding any other law, a public agency may issue bonds pursuant to this chapter to refinance outstanding bonds payable from contractual assessments levied pursuant to this chapter without complying with subdivision ~~(f)~~ (e). The final maturity date of the refunding bonds issued pursuant to this subdivision may be later than the final maturity date of the bonds being refunded as long as the final maturity date of the refunding bonds does not extend beyond the useful life of the financed improvements.

SEC. 6. Section 5898.30 of the Streets and Highways Code is amended to read:

5898.30. Assessments levied pursuant to this chapter, and the interest and any penalties thereon shall constitute a lien against the lots and parcels of land on which they are made, until they are paid. Division 10 (commencing with Section 8500), insofar as those provisions are not in conflict with this chapter, Article 13 (commencing with Section 53930) of, and Article 13.5 (commencing with Section 53938) of, Chapter 4 of Part 1 of

1 Division 2 of Title 5 of the Government Code apply to the
2 imposition and collection of assessments contracted for pursuant
3 to this chapter, including, but not limited to, provisions related to
4 lien priority, the collection of assessments in the same manner and
5 at the same time as the general taxes of the city or county on real
6 property, unless another procedure has been authorized by the
7 legislative body or by statute, and any penalties and remedies in
8 the event of delinquency and default.

9 SEC. 7. Section 5898.33 is added to the Streets and Highways
10 Code, to read:

11 5898.33. (a) If a public agency owning property, including
12 property held in trust for any beneficiary, grants a leasehold or
13 other possessory interest in the property, the contractual assessment
14 may be levied on the leasehold or possessory interest and shall be
15 payable by the owner of the leasehold or possessory interest. The
16 assessment contract shall be entered into by the public agency that
17 established the program and the lessee, and the public agency
18 owning the property shall provide prior written consent to the
19 contractual assessment.

20 (b) At the time the assessment contract is executed, the term of
21 the leasehold interest shall be at least as long as the term of the
22 assessment contract.

23 (c) If the contractual assessment on any possessory interest
24 levied pursuant to subdivision (a) is unpaid when due, the tax
25 collector may use those collection procedures that are available
26 for the collection of assessments on the unsecured roll.

27 SEC. 8. Section 5899.2 of the Streets and Highways Code is
28 amended to read:

29 5899.2. For the purpose of financing the installation of
30 distributed generation renewable energy sources pursuant to this
31 chapter, “permanently fixed” includes, but is not limited to, systems
32 attached to a residential, commercial, industrial, agricultural, or
33 other real property pursuant to a power purchase agreement or
34 lease between the owner of the system and the owner of the
35 assessed property, if the power purchase agreement or lease
36 contains all of the following provisions:

37 (a) The attached system is an eligible renewable energy resource
38 pursuant to the California Renewables Portfolio Standard Program
39 (Article 16 (commencing with Section 399.11) of Chapter 2.3 of
40 Part 1 of Division 1 of the Public Utilities Code).

1 (b) The term of the power purchase agreement or lease is at
2 least as long as the term of the related assessment contract.

3 (c) The owner of the attached system agrees to install, maintain,
4 and monitor the system for the entire term of the power purchase
5 agreement or lease.

6 (d) The owner of the attached system is not permitted to remove
7 the system prior to completion of the term of the contractual
8 assessment lien.

9 (e) After installation, the power purchase agreement or lease is
10 paid, either partially or in full, using the funds from the contractual
11 assessment program.

12 (f) The right to receive the electricity from the system, through
13 a power purchase agreement or lease or the right to the system
14 itself, is tied to the ownership of the assessed real property and is
15 required to be automatically transferred with the title to the real
16 property whether the title is transferred by voluntary sale, judicial
17 or nonjudicial foreclosure, or by any other means.

18 (g) The power purchase agreement or lease identifies the public
19 agency that is a party to the assessment contract on the real property
20 as a third-party beneficiary of the power purchase agreement or
21 lease until the assessment lien on the property has been fully paid
22 and, only until that time, prohibits amendments to the power
23 purchase agreement or lease without the consent of the public
24 agency.

25 (h) In order to ensure that the property owner is guaranteed the
26 electric power from the system for the length of the lien, the system
27 shall not be removed if the owner of the attached system is not
28 performing its obligations under the contract, and one of the
29 following is true:

30 (1) The owner of the attached system does both of the following:

31 (A) Covenants in its contract with the property owner that
32 neither the owner of the attached system nor any successor in
33 interest will remove or permanently decommission the attached
34 system during the term of the contract.

35 (B) Warrants in the contract with the property owner that no
36 assignee, creditor, partner, or owner of the attached system's owner
37 has, as of the date of the contract or during the remaining term of
38 the contract, the right to remove or permanently decommission
39 the attached system.

- 1 (2) The owner of the attached system must be a bankruptcy
- 2 remote special purpose entity that is bankruptcy remote and meets
- 3 all of the following conditions:
- 4 (A) It does not engage in any business other than owning the
- 5 attached systems and entering into electricity contracts with the
- 6 homeowner.
- 7 (B) It has no material debt.
- 8 (C) Its contracts are either entered into with unrelated third
- 9 parties or have terms negotiated at arms length.